

## DRUG AND ALCOHOL POLICY

### 1. PURPOSE

In compliance with the Drug-free Workplace Act of 1988 and in recognition of the City's compelling interest in providing a work environment that is safe, healthy, and productive for employees and the public, the following policy has been adopted:

- A. Employees are advised that manufacturing, distributing, dispensing, possessing, or using illegal controlled substances, including alcohol, on the job is prohibited; and there are job-related penalties for violations.
- B. The City has established a drug-free awareness program.
- C. Employees ~~must~~ **SHALL** abide by the terms of the City's Drug-Free Workplace Policy. ~~If convicted of a violation of a criminal drug or alcohol law, employees shall notify their Department Head or his/her designee no later than five (5) calendar days after such conviction.~~
- D. **AN EMPLOYEE, AFTER BEING ARRESTED FOR A VIOLATION OF A CRIMINAL DRUG OR ALCOHOL LAW OR ORDINANCE, SHALL NOTIFY THEIR DEPARTMENT HEAD OR HIS OR HER DESIGNEE OF SUCH ARREST NO LATER THAN FIVE (5) CALENDAR DAYS AFTER SUCH ARREST. ANY SUCH EMPLOYEE SHALL FURTHER NOTIFY THEIR DEPARTMENT HEAD OR HIS OR HER DESIGNEE OF ANY CONVICTION, ACQUITTAL, DEFERRAL OR OTHER DISPOSITION OF ANY SUCH CRIMINAL CHARGE OR CHARGES NO LATER THAN FIVE (5) CALENDAR DAYS AFTER ANY SUCH CONVICTION, ACQUITTAL, DEFERRAL, OR OTHER DISPOSITION THEREOF.**
- E. The City shall take sanctions against, or require satisfactory completion in a drug and/or alcohol abuse assistance or rehabilitation program, by any employee who violates this policy.
- F. A positive drug and/or alcohol test by a City of Casper employee is considered just cause for termination of employment. If at any time an employee produces a positive drug and/or alcohol test, their future employment shall be dependent upon compliance with the terms and conditions of this drug and alcohol policy.

In addition, the Omnibus Transportation Employee Testing Act of 1991 and related Federal regulations require that the City maintain a policy that applies to all City employees who are required by their job function, job description and/or The United States Department of Transportation (DOT) to maintain a

Commercial-Driver's License (CDL). A copy of the Drug and Alcohol Policy for City employees who are required under DOT regulations to be drug and alcohol tested is available under separate cover from the Human Resources Department. In the case where employees fall under DOT drug and alcohol testing regulations, both that policy and the City's Drug and Alcohol Policy described here apply. Any conflict between the two policies shall be resolved in the absolute discretion of the City.

**THE CASPER POLICE DEPARTMENT HAS A SEPARATE DRUG AND ALCOHOL POLICY COVERING VARIOUS EMPLOYEES IN THAT DEPARTMENT. EMPLOYEES COVERED UNDER THE CASPER POLICE DEPARTMENT DRUG AND ALCOHOL POLICIES ARE NOT SUBJECT TO THIS POLICY.**

The Casper Fire Department (CFD) management and the Local No. 904 IAFF Union negotiated a separate drug and alcohol policy for employees within the CFD. Therefore, the policy described herein does not apply to CFD employees.

2. DEFINITIONS

Controlled substance – means a controlled substance in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. § 812) and as further defined in Regulation 21 CFR 1308.11-1308.15.

Illegal drugs – means any drug or controlled substance, the possession or use of which is unlawful, pursuant to any federal, state, or local laws or regulations.

Under the influence – the use or misuse of any drug or controlled substance, or alcohol that results in a positive drug/alcohol test as defined in the Section 3, C.

3. GENERAL GUIDELINES

The following procedures apply to all City employees while on duty:

A. Prohibited Activity – Drugs

1. No employee shall illegally possess any controlled substance.
2. No employee shall ingest, inject or inhale any illegal, controlled substance, unless as prescribed by a licensed medical practitioner.
  - a. Employees shall consult with their physician to determine if a prescribed medication may impair their job performance. If the employee's physician informs the employee that the prescribed medication may impair the employee's job performance, the employee shall not report

to work. It is the employee's responsibility to notify their immediate supervisor if the employee does not report to work because the use of a prescription medicine may impair their job performance. In addition, it is the employee's responsibility to consult with his or her doctor regarding the nature of his or her duties and the interaction with the prescribed drug. If the employee's physician informs the employee that he/she may perform some of his/her duties without impairment, the employee shall advise the supervisor of the known side effects of the medication, the prescribed period of use, and the job duties the physician believes he/she can perform without impairment. The prescribed medicine shall be taken according to the physician's instructions. The employee is not required to disclose either the condition that the medication is prescribed for or the name of the medication.

- b. All employees shall notify their supervisor immediately if they, while on duty, ingest, inhale, etc., a controlled substance.
- 3. No employee shall ingest or inhale any prescribed medication in amounts beyond the recommended dosage, unless authorized by the physician.
- 4. No supervisor having actual knowledge of an employee possessing an illegal drug on City premises or in a City vehicle may permit the employee to remain on duty. This requirement does not apply to authorized Police personnel handling illegal drugs in the lawful performance of their duties.

B. Prohibited Activity - Alcohol

- 1. All employees are prohibited from possessing alcohol while on duty with the exception of medications containing alcohol. This section does not apply to employees handling alcohol-containing products in the performance of their duties.
- 2. No employee shall report for duty or remain on duty while having greater than 0.02% blood-alcohol concentration.
- 3. No supervisor having actual knowledge of an employee possessing alcohol in a City building or in a City vehicle in violation of this policy may permit the employee to remain on duty. This requirement does not apply to authorized Police personnel handling alcohol in the lawful performance of their duties.

C. Positive Tests

1. A positive alcohol test is a test where the result is above 0.02% blood alcohol content.
2. Concentrations of an illegal drug at or above the standards set forth in 49 CFR Part 40 in the field of illegal drug testing shall be considered as a positive test, both for initial screening and confirmation. Confirmation shall be by test on a urine specimen that tested positive, on the initial screen, using a technologically different method from the initial screening method, such as gas chromatography/mass spectrometry.

D. Rapid Eye Check™

The Rapid Eye Check™ includes the following five short tests of an employee's eye to determine if there is reasonable cause to believe if an individual is under the influence of drugs/alcohol:

Check 1 – general observation of the eye

Check 2 – observation of the pupil size

Check 3 – observation of the pupil's reaction to light

Check 4 – observation of how the eye focuses and tracks [called the nystagmus tests]

Check 5 – observation of eye's muscle control ability [called the convergence test]

The Rapid Eye Check™ is a tool that may be considered in determining reasonable suspicion. The following guidelines shall be used when using the Rapid Eye Check™.

1. The employee's supervisor will request the Rapid Eye Check™ when he/she believes there are specific, articulable, and objective facts from which it is reasonable to infer that further investigation of an employee's behavior is warranted. The employee's supervisor will refer to Section 4, Testing, Subsection B. "Reasonable suspicion testing of this policy."
2. Supervisors shall reasonably detail, in writing, the specific facts, symptoms, and/or observations, as well as any corroboration, which formed the basis for their determination for requesting a Rapid Eye Check™. This documentation of facts shall be on the Rapid Eye Check™ Incident Report Form, available through Human Resources. In addition, the Rapid Eye Check™ Incident Report Form shall be forwarded to the Human Resources Director.

3. The Human Resources Director, Human Resources Analyst, Risk Manager, Safety Technician, and designated department employee(s) shall be certified to perform the tests and will perform the Rapid Eye Check™. However, an employee may request that the Rapid Eye Check™ be done by any one of the above certified-individuals enumerated in this paragraph in place of the designated department employee.
4. If an employee refuses to submit to, or fails two (2) of the five (5) eye checks of the Rapid Eye Check™, reasonable suspicion exists to request an employee to have a drug and/or alcohol test. The procedures included in the reasonable suspicion testing section of this policy shall be followed.

4. TESTING

A breath and/or a urinalysis test under this policy shall be used in any of the following situations:

Pre-employment testing  
Reasonable suspicion testing  
Random testing

A. Pre-Employment Testing

After a conditional offer of employment and before an employee is hired, all City employment candidates shall be tested for controlled substances. The conditional offer shall be withdrawn if the test indicates a positive result or if the testing facility staff believe the sample was tampered with or altered.

B. Reasonable Suspicion Testing

"Reasonable suspicion" means a belief based on specific, articulable, (i.e., verbally expressed) and objective facts from which it is reasonable to infer that further investigation of an employee's behavior is warranted.

1. Matters and circumstances that may be considered in determining reasonable suspicion include:
  - a. Information concerning a prohibited activity;
  - b. The reliability of the information;
  - c. The degree of corroboration;
  - d. Other contributing factors;

- e. Abnormal or erratic behavior by the employee;
  - f. Information concerning recent drug or alcohol use by the employee, provided by reliable and credible sources;
  - g. Direct observation of drug or alcohol use prior to the time of an accident/incident and/or situation;
  - h. Presence of observable symptoms consistent with drug or alcohol use; including but not limited to, glassy or bloodshot eyes, alcohol odor, slurred speech, poor coordination and/or reflexes;
  - i. Involvement in an on-duty accident or incident. City employees who are involved in an on-duty accident or incident resulting in any of the following shall be subjected to drug and/or alcohol testing:
    - (1.) Loss of life;
    - (2.) Employee injury or injuries to others requiring medical treatment away from the place of the accident or incident. Provided however, this specific provision shall not apply to a sworn police officer who is the only individual injured;
    - (3.) Damage, estimated to be greater than or equal to \$1,000.00, to property or vehicles while operating a City vehicle;
    - (4.) Employee cited at the time of the accident/incident by a state or local law enforcement officer for a moving traffic violation; or
    - (5.) Any factor, from which it is reasonable to infer that further investigation of the accident or incident, or the employee's behavior, is warranted.
  - j. An employee's failure of two (2) of the five (5) Rapid Eye Checks™ described in this policy;
  - k. A positive test result under the Drug And Alcohol Policy for City employees who fall under dot regulations.
2. Supervisors shall reasonably detail, in writing, the specific facts, symptoms, and/or observations, as well as any corroboration, which formed the basis for their determination that reasonable suspicion existed. This documentation shall be on the backside of The "Consent To Test And Release of Information" form, available through Human Resources, or on a separate piece of

paper attached to the consent form. In addition, this documentation is to be forwarded to the Department Head or his/her designee and the Human Resources Director.

3. The facts and documentation underlying the determination of reasonable suspicion shall be disclosed to the employee at the time the demand for testing is made.
4. An employee, pending a drug/alcohol test, shall be temporarily removed from his or her job duties pending an investigation, and shall be placed on unpaid administrative leave until the results of the drug/alcohol tests are received. The employee shall not be allowed to drive to or from the testing site, and the employee will be escorted to the testing facility and home by the supervisor, Department Head, and/or a Human Resources employee. Employees who are required to submit to drug and/or alcohol testing due to reasonable cause will not be allowed to drive City vehicles until they have been released to do so by the Medical Review Officer and/or the Human Resources Director.
5. If an alcohol test is not administered within eight hours or if a required controlled substance test is not administered within thirty-two hours of the determination of its necessity, attempts to administer such test shall be abandoned and the reasons why the test was not administered shall be documented. Copies of this documentation shall be supplied to the Human Resources Director and maintained in a secure file.

#### C. Random Testing

Employees who fall under DOT regulations for CDL holders are subject to random testing. Casper Fire Department (CFD) employees are also subject to random testing as described in the CFD Drug And Alcohol Policy.

### 5. TESTING METHODOLOGY

- A. Employees shall sign a Consent Form, ~~an attachment to this manual,~~ **AVAILABLE THROUGH HUMAN RESOURCES**, allowing the breath and/or urine test to take place and permitting release of test results to the City and for the City's use in any and all employment disciplinary or termination actions or proceedings. Employees, who refuse to sign the Consent Form, to be tested, or to otherwise cooperate in the testing process, shall be deemed to have tested positive and a recommendation for termination of employment shall be made.

- B. Testing for drugs and alcohol and test sample verification shall be performed by certified personnel selected by the City. The test specimen for alcohol will consist of a breath sample. The test specimen for drugs shall be urine.
- C. Confirmation for a positive alcohol test shall be done by a second breath test. The employee may request, at their expense, a blood test as confirmation.
- D. Confirmation for a positive drug test shall be by testing the urine specimen that tested positive, on the initial screen, by using a technologically different method from the initial screening method, such as gas chromatography/mass spectrometry. All positive drug test results shall be reviewed and interpreted by a Medical Review Officer (MRO) before they are reported to the employer. "Medical Review Officer" means the individual responsible for receiving laboratory results, who is a licensed physician. If the testing laboratory reports a positive result to the MRO, the MRO shall contact the employee, in person or by telephone, and shall conduct an interview to determine if there is an alternative medical explanation for the drugs found in the employee's urine specimen. If the MRO determines that there is a legitimate medical use of the prohibited drug, the drug test result shall be reported as negative to the employer. The City's chosen provider designates the MRO.
- E. Each test specimen for drug testing shall be subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory. If the analysis of the primary specimen confirms the presence of a controlled substance, the employee, at her/his expense, has 72 hours to request the split specimen be sent to another certified laboratory for analysis. The employee will be reimbursed if the confirmation shows a negative result. The MRO initiates this procedure.
- F. The City shall pay the cost of all tests, which it requires. If an employee is required to submit to an examination or test, or await test results (except for reasonable suspicion testing) the employee shall be paid his or her normal rate of pay during the testing and waiting period.
- G. In the event that an individual to be tested for drugs appears unable to provide a urine specimen at the time of the test, he or she shall be permitted no more than three (3) hours to give a specimen, during which time the individual shall remain in the testing area, under observation. The individual shall be given no more than 40 ounces of water to drink over the course of the three hours. Whenever there is a reason to believe that a specimen may have been altered or a substitution made, a second



specimen shall be immediately provided by the employee. The testing facility will provide documentation to the Human Resources Director explaining the reasons for a second specimen. Failure to submit a specimen shall be considered a refusal to submit to a drug and/or alcohol test unless a physician provides a documented medical reason. A refusal to submit to the drug/alcohol test shall be deemed to be a positive test and a recommendation for termination shall be made.

- H. The Human Resources Director or his/her designee shall be advised of the results of the drug and/or alcohol test by the Medical Review Officer.

## 6. SELF DISCLOSURE/EMPLOYEE ASSISTANCE

If an employee self-discloses a drug and/or alcohol problem to their Department Head and/or the Human Resources Director before being suspected of being under the influence of drugs or alcohol, or before being selected for a random test for drugs/alcohol pursuant to this policy, no disciplinary action will be taken against the employee for the act of self disclosure. Such an employee will be advised that he or she may access the Family Medical Leave Act (FMLA) policy to seek help from a substance abuse professional.

Any employee, who feels that he or she has developed a problem, addiction, or dependency on a drug, including alcohol, is encouraged to seek assistance. The Family and Employee Assistance Program (FEAP) is available to all employees, and their families, on a confidential basis, and information about FEAP may be obtained through the Human Resources Department.

## 7. CONSEQUENCES OF VIOLATION

- A. Consequences Of Violation For Employees ~~Other Than Sworn Police Officers~~ **WHO ARE NOT OTHERWISE COVERED UNDER DRUG AND ALCOHOL POLICIES OF THE CASPER POLICE DEPARTMENT.**

Upon confirmation that an employee has violated this policy, an employee shall be referred to a substance abuse professional for the purpose of obtaining assessment, counseling, and/or rehabilitation. The employee's participation in and successful completion of the professional's prescribed program, or a similar program approved by the Human Resources Director is required and shall be a condition of continued employment.

Upon returning to work, the employee shall be required, at their expense, to submit to a minimum of six (6) unannounced drug and/or alcohol screenings for a period of twelve (12) months. These are in addition to the required participation in the random testing program for CDL holders.

Employees who return to work with random testing as a condition of employment will not be allowed another positive drug or alcohol test result. Any additional positive drug or alcohol test will result in a recommendation for termination of employment.

Any supervisor, who violates responsibilities identified in this policy, may be subject to disciplinary action, up to and including termination.

~~B. Consequences Of Violation For Sworn Police Officers~~

~~Termination of employment will be recommended for any sworn Police officer who tests positive for alcohol or a controlled substance pursuant to this policy.~~

8. HANDLING TEST RESULTS, RECORD RETENTION, AND CONFIDENTIALITY

- A. Testing results and rehabilitation records shall not be part of the personnel file, except as relating to disciplinary action. The Human Resources Director shall be responsible for these files. Any voluntary request by an employee for assistance with his/her own substance abuse problem shall remain confidential unless the employee unsuccessfully completes his/her rehabilitation program.
- B. The Human Resources Department Director or her/his designee shall maintain records of alcohol, controlled substance, and drug misuse in a secure location with access restricted to the employee, the City Manager, the Human Resources Director, Human Resources Analyst, Risk Manager, the employee's supervisor, and City legal counsel.
- C. The following records shall be retained for five years:
  - (1.) Records of alcohol test results showing blood alcohol content.
  - (2.) Records of verified positive controlled substance/drug test results.
  - (3.) Documentation of refusals to take required alcohol or controlled substance/drug tests.
  - (4.) Consent to test and release information forms.
  - (5.) Calibration testing records (kept at the testing/laboratory facility).
- D. The employee's test results shall be available for inspection by the employee.
- E. Records relating to an employee's drug/alcohol testing or misuse of drugs/alcohol may be used and disclosed in any and all termination or disciplinary actions or proceedings by the City. Such records shall not be released to other third parties without the employee's consent absent a court order.

- F. The Human Resources Director or his/her designee shall inform an employee's supervisor of a confirmed positive test result.
- G. The confidentiality of an employee's drug/alcohol testing and the records related thereto shall be waived for purposes of hearings and further proceedings if the employee appeals his/her termination, or brings or commences an action against the City in any court or administrative agency which is based on, or in any way related to the employee's drug/alcohol test. The City shall have the right to disclose and use the employee's drug/alcohol records and documentation only in the defense of, and in the course of any such appeal, court, or administrative action.